

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

NANCY JEAN ANDUJAR, RN

Registered Nurse License No. 636313

Respondent.

Case No. 2007-301

OAH No. L2007090349

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on April 19, 2008.

IT IS SO ORDERED March 19, 2008



President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

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**PROPOSED DECISION**

Gary Brozio, Administrative Law Judge, Office of Administrative Hearings, heard this matter in San Diego, California on December 7, 2007 and January 25, 2008.

Ron Espinoza, Deputy Attorney General, represented complainant Ruth Ann Terry, M.P.H., R.N., Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

Nancy Jean Andujar, respondent, represented herself and was present throughout the proceeding.

The matter was submitted January 25, 2008.

**FACTUAL FINDINGS**

*Background*

1. On April 20, 2004, the Board of Registered Nursing (Board) issued Nancy Jean Andujar (respondent) Registered Nursing License Number 636313. The license is active and will expire on November 30, 2009, unless renewed. There was no evidence of prior discipline on respondent's license.

2. On June 15, 2007, complainant signed an Accusation seeking discipline on respondent's license because she had been convicted of driving under the influence of alcohol (DUI), which warranted discipline as a substantially related crime and unprofessional conduct. The Accusation also requested costs of investigation and enforcement.

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BOARD OF REGISTERED NURSING

3. Respondent filed a Notice of Defense, and the hearing commenced on December 7, 2007. On that day, respondent admitted that she had a single conviction for driving on a suspended license. The record was kept open to permit complainant to obtain the relevant documents and to permit written closing arguments based on the new evidence.

4. On December 14, 2007, complainant provided court documents showing that respondent actually had three criminal convictions since her DUI conviction. Specifically, on September 5, 2005, respondent was convicted of driving on a suspended license, and on September 12, 2006, respondent was convicted of driving on a suspended license and hit and run. Accordingly, complainant filed a First Amended Accusation alleging the hit and run conviction as an additional basis for discipline as a substantially related crime and unprofessional conduct. Complainant requested that the hearing be reopened to permit receipt of additional evidence.

5. The cause was set for further hearing on January 25, 2008.

#### *Circumstances of the DUI Conviction*

6. On June 2, 2005, respondent was intoxicated and drove to her children's school to pick them up. On the way home with two children passengers, she was weaving and nearly hit another car. The driver of the other car contacted respondent at a stop sign and noticed that respondent appeared drunk. The other driver reported the incident to police and then followed respondent home.

7. At approximately 3:52 p.m., the first of two sheriff's deputies contacted respondent at her home. She attempted to get around the officer and appeared to be trying to get into her car and drive away. The deputy detained her. The second deputy arrived and conducted an investigation. The second deputy noticed that respondent displayed severe symptoms of intoxication and determined that she was unable to perform field sobriety tests. When interviewed, respondent admitted that she was taking one milligram of Xanax a day for anxiety. The second deputy told respondent that she was under arrest, and she began to resist. She was handcuffed, placed in the patrol car, and transported to the sheriff's Encinitas substation where she took a blood test at 5:23 p.m.<sup>1</sup>

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<sup>1</sup> The circumstances of the crime described by respondent and in a police report. The police report was admitted as administrative hearsay, but respondent corroborated so much of the testimony in cross-examination that nearly all of the statements in the police report were admissible.

### *DUI Conviction*

8. On June 28, 2005, the San Diego County District Attorney charged respondent with driving under the influence of alcohol (Veh. Code, § 23152, subd. (a)) and driving with a blood alcohol level in excess of .08 percent (Veh. Code, § 23152, subd. (b)). Both charges included an allegation that a minor under the age of 14 years was a passenger in the vehicle (Veh. Code, § 23572, subd. (a)).

9. On August 16, 2005, respondent entered a guilty plea to a violation of Vehicle Code section 23152, subdivision (b). (Case No. CN196555.) The plea form indicated that respondent blood alcohol level was .14 percent. The court placed respondent on three-years probation on the condition, among others, that she violate no laws, complete the first offender program, and pay a fine of \$2,000.

### *Subsequent Crimes*

10. On the morning of February 27, 2006, respondent was leaving work after a long shift and she fell asleep at the wheel and hit another car. Respondent and the victim pulled to the curb, but when the victim expressed her desire to call the police for a police report, respondent fled the scene without exchanging all necessary information. The victim recorded respondent's license plate number and called the police. The police found respondent, who admitted that she panicked and did not do the right thing. She fled the scene to avoid prosecution for driving on a suspended license. At the hearing, respondent admitted that she was knowingly driving on a suspended license on this date.

11. On June 10, 2006, respondent was caught a second time driving on a suspended license. She was stopped for driving at an unsafe slow speed, and the officer discovered her license was suspended. At the hearing, respondent admitted that she was knowingly driving on a suspended license on this date.

### *Subsequent Court Proceedings*

12. On June 22, 2006, the San Diego County District Attorney charged respondent with hit and run, various forms of driving on a suspended license, and failure to have proof of insurance. (Case No. M993733.)

13. On June 26, 2006, the San Diego City Attorney filed a misdemeanor complaint charging respondent with driving on a suspended license. (Case No. CN213536.)

14. On July 5, 2006, the court summarily revoked probation on the DUI case and issued an order to show cause because respondent had been charged with another criminal offense. The hearing was set for September 5, 2006 in conjunction with the DUI case.

15. On September 5, 2006, respondent pled guilty to a violation of Vehicle Code section 14601.1, subdivision (a) (driving on a suspended license).<sup>2</sup> (Case No. CN213536.) The court placed her on three years summary probation on the condition that she pay various fines and fees. (Case No. CN196555.) The same day, the court also reinstated probation on the DUI case. The docket indicated that respondent had failed to pay \$1,224 in fines.

16. On September 12, 2006, respondent pled no contest to a violation of Vehicle Code section 20002, subdivision (a) (hit and run)<sup>3</sup> and Vehicle Code section 14601.1, subdivision (a)(driving on a suspended license). (Case No. M993773.) In exchange for her plea, the prosecutor dismissed three remaining counts. The factual basis for the hit-and-run conviction was that respondent "was the driver of a vehicle involved in an accident and did fail to stop immediately at the scene." The court placed respondent on summary probation for three years on the condition, among others, that she complete seven days of public service work and pay various fines and fees.

17. On December 13, 2006, the court summarily revoked respondent's probation in the hit-and-run case, issued a bench warrant, and set bail at \$5,000 because respondent failed to appear for a restitution hearing.

18. On February 20, 2007, the court referred respondent's hit-and-run case to a collection agency because she failed to pay fines in the amount of \$2,356.

#### *Respondent's Mitigation and Rehabilitation Evidence*

19. Respondent (age 49) and her husband, Edward Andujar (age 51), have been married nearly 20 years. They have four daughters ages 10, 13, 14, and 16. The daughters are excellent athletes, and two of them have become exceptional soccer players on an international level.

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<sup>2</sup> That subdivision provides: "No person shall drive a motor vehicle when his or her driving privilege is suspended or revoked for any reason other than those listed in Section 14601, 14601.2, or 14601.5, if the person so driving has knowledge of the suspension or revocation. Knowledge shall be conclusively presumed if mailed notice has been given by the department to the person pursuant to Section 13106. The presumption established by this subdivision is a presumption affecting the burden of proof."

<sup>3</sup> That subdivision provides: "(a) The driver of any vehicle involved in an accident resulting only in damage to any property, including vehicles, shall immediately stop the vehicle at the nearest location that will not impede traffic or otherwise jeopardize the safety of other motorists. Moving the vehicle in accordance with this subdivision does not affect the question of fault. The driver shall also immediately do either of the following: (1) Locate and notify the owner or person in charge of that property of the name and address of the driver and owner of the vehicle involved and, upon locating the driver of any other vehicle involved or the owner or person in charge of any damaged property, upon being requested, present his or her driver's license, and vehicle registration, to the other driver, property owner, or person in charge of that property. The information presented shall include the current residence address of the driver and of the registered owner. If the registered owner of an involved vehicle is present at the scene, he or she shall also, upon request, present his or her driver's license information, if available, or other valid identification to the other involved parties. (2) Leave in a conspicuous place on the vehicle or other property damaged a written notice giving the name and address of the driver and of the owner of the vehicle involved and a statement of the circumstances thereof and shall without unnecessary delay notify the police department of the city wherein the collision occurred or, if the collision occurred in unincorporated territory, the local headquarters of the Department of the California Highway Patrol."

20. Respondent's husband is an unlicensed family-practice physician who graduated from Harvard Medical School in 1985. Respondent is a licensed registered nurse (in four states) who graduated from Temple University in 1985. They met when he began his residency and she began a year of hospital work at Temple University. They married in 1988.

21. After they completed their education, they performed volunteer medical work in South America. They returned to the New Jersey where Respondent opened a 24 hour urgent care center. Respondent worked at the center, where she developed an IV program for patients with Lyme disease and AIDS. She and her husband worked many hours at the business, but respondent's participation curtailed as they began to have children.

22. At some point, respondent's husband was convicted of federal bankruptcy fraud and tax evasion. Although the circumstances of the crime were not meaningfully described at the hearing, respondent said that it resulted in a great deal of local publicity. As a result, in 2003 the family decided to move to San Diego, California. Respondent's husband elected to serve his time at a federal facility in San Diego so that he could be close to his family.

23. When respondent's husband was incarcerated, the burden for caring for the family fell on respondent. It was difficult to care for four children alone. The family had financial difficulties. It was during this time that she was arrested and convicted for drunk driving.

24. After her conviction, respondent began, but did not complete, a 12 Step program at the Women's Center in Oceanside. Respondent left the program because her mother got ill in France. On her return, she attended and completed a 12-Step program at the McAllister House in Oceanside, which included counseling, meetings, and other educational programs. Respondent said that she learned to recognize her limits reach out for help, learned strategies for coping with stress, and learned that life is not so unsolvable as to risk lives. Respondent stated that she was still a member of Alcoholics Anonymous, but she was not attending meetings on a regular basis, she was not working on the steps, and she did not know her sobriety date. She said that she still kept contact with her sponsor (who was moving to Seattle), and that she was not drinking alcohol. She managed her stress by exercising daily. Her focus was on being a good mother to her children.

25. Respondent currently performs registry nursing for a company called First Class. She primarily works at three or four different hospitals in Orange County. She works in a floating position that takes her to the emergency room, telemetry units, medical surgery, and step-down units. She averages 40 to 60 hours a week. She has no consistent supervisor. Respondent was very unclear about whether her employer knew about her conviction, and she said that she did not inform her employer about the administrative hearing. There were no letters from respondent's employer or the supervisors of the hospitals she frequented. Respondent stated that she loved her job and wanted to continue registered nursing.

26. According to her husband, respondent was a competent nurse when she worked at his urgent care facility. This was nearly 15 years ago. Letters confirmed that respondent was a caring nurse, but they were from patients she tended years ago on the east coast. There was no meaningful assessment of respondent's abilities since her four convictions.

27. Respondent's husband was released from custody on August 9, 2006, and his probation expires on August 9, 2009. His licenses to practice medicine have been revoked, and he believes there is little chance they will be reinstated. He works for OSO Home Care, but he did not say what salary he earns. He said that the family savings were spent on his criminal defense. He estimated that, once the IRS makes the precise determination, he will owe about \$500,000 in restitution to the federal government. He said that the family now has trouble meeting its financial obligations. To make ends meet, they need respondent to work in registry nursing, which commands a higher rate of pay than regular nursing.

28. Respondent's husband and two of their children said that respondent was remorseful. Respondent also said that she was remorseful; however, this did not come across in the hearing.

#### *Respondent's Testimony and Demeanor*

29. On both hearing dates, respondent was upset, nervous, and distraught. She did not appear emotionally stable. She had trouble explaining herself so often that it appeared she was either hiding evidence or was genuinely unable to convey basic facts. She was evasive. She could not answer basic questions directly. She refused to admit that she was guilty of hit and run. She blamed the government for her problems and was in denial about her responsibility for her own criminal conduct. Her performance on criminal probation has been dismal, and she readily meted out excuses why this was justified. It was not until the final closing argument, under frank questioning by the Administrative Law Judge, that respondent showed a glimmer of contrition and remorse and a modicum of insight into the irrationality of her behavior. This last-minute glimmer of insight saved respondent from a recommendation of outright revocation.

#### *Evaluation*

30. There is no denying that respondent went through a difficult time with her husband's conviction, the resulting financial difficulties, and the hardship of working while raising four children. Likewise, there is no denying that respondent has a long track record of good nursing. But these facts do not bear on the most important question in this case – i.e. is it safe for respondent to practice nursing now? At the hearing, respondent showed poor insight into the reasons for her convictions and other difficulties. She related a long period of extreme stress that resulted in four criminal convictions. Two of those convictions put the public at great risk (drunk driving with children in the car near a school, weaving, nearly hitting another driver, and falling asleep at the wheel). Moreover, respondent's demeanor and testimony at the hearing demonstrated that she is not in control of her emotions, that she rationalizes foolish and dangerous behavior, and that she does not accept responsibility for

her actions. The overall picture is one of substantial risk to the public, the need for monitoring, and the need for physical and psychological rehabilitation. Therefore, respondent must be placed on probation, and she must undergo a physical and mental examination to insure that she can safely practice the profession.

## LEGAL CONCLUSIONS

### *Burden of Proof*

1. Regarding the allegations seeking discipline, complainant had the burden to prove them by clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Reality Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.) This standard is defined as “highly probable.” (CACI § 201.)

2. Regarding the costs of investigation, complainant had the burden to prove them by a preponderance of evidence. (Evid. Code, § 115.) This standard is defined as “more likely to be true than not true.” (CACI § 200.)

### *Cause for Discipline*

3. Substantially Related Crimes: The First and Fourth Causes for Discipline seek discipline based upon respondent’s convictions for DUI and hit-and-run. The Board has authority to discipline a registered nurse’s license for the conviction of a substantially related crime under Business and Professions Code sections 490, 2750, and 2761, subdivision (f).

4. Title 16 of the California Code of Regulations (CCR), section 1444, sets forth the criteria of substantial relationship. It states in relevant part:

“A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.”

5. The Board’s “Recommended Guidelines for Disciplinary Orders and Conditions of Probation” (Guidelines) do not list drunk driving as a substantially-related crime, but the fact that the crime constitutes unprofessional conduct under Business and Professions Code section 2762, subdivision (b) leaves no doubt that drunk driving is substantially related to the profession.

6. Cause exists to impose discipline on respondent’s license because she was convicted of driving under the influence of alcohol, which is a crime substantially related to the practice of registered nursing. This conclusion is based on Factual Findings 6-9 and Legal Conclusions 1 and 3-6.

7. The Guidelines do not list hit-and-run as a substantially related crime, but neither do they preclude such a finding. The question is whether hit-and-run bears a "logical relationship" to respondent's fitness to engage in nursing. (*In re Lesansky* (2001) 25 Cal. 4<sup>th</sup> 11, 14.) In *People v. Bautista* (1990) 217 Cal.App.3d 1, 7, the court held that felony hit-and-run was a crime involving moral turpitude because a person leaving the scene of an injury accident was likely seeking to evade criminal or civil prosecution. Thus, the person was attempting to conceal his or her identity and involvement in an injury accident. The court concluded that this mental state indicated a "readiness to do evil." The reasoning in *Bautista* extends to misdemeanor hit-and-run because a person leaving the scene of an accident involving property is attempting to avoid paying for the damages. In respondent's case, there was the additional motivation to avoid criminal prosecution for driving on a suspended license. Thus, respondent's hit-and-run conviction clearly involved moral turpitude and therefore was related to the practice of nursing.

8. Cause exists to impose discipline on respondent's license because she was convicted of hit-and-run driving, which is a crime substantially related to the practice of registered nursing. This conclusion is based on Factual Findings 10 and 16 and Legal Conclusions 1, 3-4, and 7-8.

9. Unprofessional Conduct: The Second and Third Causes for Discipline seek discipline for unprofessional conduct based on respondent's DUI conviction, and the Fifth Cause for Discipline seeks discipline for unprofessional conduct based on respondent's hit-and-run conviction. The Board has authority to discipline a licensee for unprofessional conduct under Business and Professions Code sections 2750 and 2761, subdivision (a).

10. Regarding the DUI conviction, section 2762, subdivisions (b) and (c) state that it is unprofessional conduct to:

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof."

11. Cause exists to impose discipline on respondent's license because she was convicted of driving under the influence of alcohol, and the conduct endangered respondent, two of her children, and other motorists on the roadway. These conclusions are based on Factual Findings 6-9 and Legal Conclusions 1 and 9-11.

12. The Fifth Cause for Discipline seeks discipline for unprofessional conduct based on respondent's hit-and-run conviction and section 2761, subdivision (a). That section does not list hit-and-run driving as unprofessional conduct; however, it is apparent that dishonest conduct is inconsistent with the profession of nursing.

13. Cause exists to impose discipline on respondent's license because she was convicted of hit-and-run driving, which involved dishonesty. This conclusion is based on Factual Findings 10 and 16 and Legal Conclusions 1, 9, and 12-13.

#### *Degree of Discipline*

14. In reaching a decision in a disciplinary action, 16 CCR, section 1444.5 requires the Board to consider the Guidelines. The Guidelines state that a criminal conviction for a substantially related crime constitutes unprofessional conduct. Revocation is the recommended discipline for violations of section 2761, subdivisions (a) and (f). The recommended discipline for violations of subdivision (b) of section 2762 is revocation. Revocation is also recommended for violations of subdivision (c) of section 2762, when the licensee is convicted of a criminal offense and was under the influence of drugs or alcohol. Under both these subdivisions, however, a first-time offender with documented evidence of an on-going rehabilitation program may receive minimum discipline of revocation stayed with three years probation and conditions of probation 1-19.

15. The Guidelines set forth the following factors to be considered when determining whether revocation, suspension, or probation is the appropriate level of discipline:

- “1. Nature and severity of the act(s), offenses, or crime(s) under consideration.
2. Actual or potential harm to the public.
3. Actual or potential harm to any patient.
4. Prior disciplinary record.
5. Number and/or variety of current violations.
6. Mitigation evidence.
7. Rehabilitation evidence.
8. In case of a criminal conviction, compliance with conditions of sentence and/or court-ordered probation.
9. Overall criminal record.
10. Time passed since the act(s) or offense(s) occurred.
11. If applicable, evidence of expungement proceedings pursuant to Penal Code Section 1203.4.”

16. The Guidelines set for the following principles for considering mitigation evidence:

“The respondent is permitted to present mitigating circumstances at a hearing. The same opportunity is provided in the settlement process.

The following documents are examples of appropriate evidence the respondent may submit to demonstrate his or her rehabilitative efforts and nursing competency:

A) Recent, dated written statements from persons in positions of authority who have on-the-job knowledge of the respondent's current nursing competence. Each statement should include the period of time and capacity in which the person worked with the respondent and should contain the following sentence at the end: "I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct." It should be signed by the one making the statement and dated.

B) Recent, dated letters from counselors regarding respondent's participation in a rehabilitation or recovery program, where appropriate. These should include a description of the program, the number of sessions the respondent has attended, the counselor's diagnosis of respondent's condition and current state of rehabilitation (or improvement), the counselor's basis for determining improvement, and the credentials of the counselor.

C) Recent, dated letters describing respondent's participation in support groups, e.g., Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Groups, etc., where appropriate, and sobriety date.

D) Recent, dated laboratory analyses or drug screen reports, where appropriate.

E) Recent, dated performance evaluation(s) from respondent's employer.

F) Recent, dated physical examination or assessment report by a licensed physician, nurse practitioner, or physician assistant.

G) Certificates or transcripts of courses related to nursing which respondent may have completed since the date of the violation. An RN whose license has been revoked does not have an RN license and therefore cannot use his or her former license number to obtain continuing education credit/hours or for any other purpose. However, he or she may take continuing education courses so long as an RN license is not used."

17. The criteria for rehabilitation set forth in 16 CCR 1445, subdivision (b) provides:

"When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.”

18. The appropriate level of discipline in this case is a three-year period of probation with conditions 1 through 19. This conclusion is based on all Factual Findings and Legal Conclusions.

#### *Reasonable Costs of Investigation*

19. The Accusation seeks costs under Business and Professions Code section 125.3. That section provides in pertinent part:

“(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative

law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).”

20. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4<sup>th</sup> 32, the California Supreme Court held that the imposition of costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5 did not violate due process. However, the court held that it was incumbent on the Board to exercise its discretion to reduce or *eliminate* cost awards in a manner that ensured section 317.5 did not “deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing.” The Court set forth four factors that the Board was required to consider when deciding whether to reduce or eliminate costs. These were: (1) Whether the chiropractor used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the chiropractor had a “subjective” good faith belief in the merits of his position; (3) whether the chiropractor raised a “colorable challenge” to the proposed discipline; and (4) whether the chiropractor had the financial ability to make payments.

Since regulation 317.5 and section 125.3 have substantially the same language and seek the same sort of cost recovery, it is reasonable to extend the reasoning in *Zuckerman* to section 125.3.

21. Complainant submitted a cost declaration showing 22 hours of attorney time with a total cost of \$3,374. These costs were reasonable.

Respondent submitted significant testimony about inability to pay. Respondent’s husband testified that, once the IRS makes the final determination, he likely will owe \$500,000 in restitution to the federal government. Respondent herself has had trouble making paying her criminal fines. The family is having trouble meeting their basic monthly expenses. They have no realistic ability to pay costs. These conclusions are based on Factual Findings 19-27 and Legal Conclusions 2 and 18-20.

## ORDER

IT IS HEREBY ORDERED that Registered Nurse License Number 636313 issued to Respondent Nancy Jean Andujar is revoked. However, the revocation is stayed and respondent is placed on probation for three (3) years on the following conditions.

SEVERABILITY CLAUSE – Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

(1) OBEY ALL LAWS - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the

respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

**CRIMINAL COURT ORDERS:** If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

(2) COMPLY WITH THE BOARD'S PROBATION PROGRAM - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, respondent's license shall be fully restored.

(3) REPORT IN PERSON - Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.

(4) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when he or she resides outside of California. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he or she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he/she applies for or obtains a new nursing license during the term of probation.

(5) SUBMIT WRITTEN REPORTS - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

(6) FUNCTION AS A REGISTERED NURSE - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, “engage in the practice of registered nursing” may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent’s probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS - Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to his or her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after he or she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he or she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

(8) SUPERVISION - Respondent shall obtain prior approval from the Board regarding respondent’s level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless

alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.

(d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

(9) EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

(10) COMPLETE A NURSING COURSE(S) - Respondent, at his or her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his or her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to respondent after photocopying them for its records.

(11) COST RECOVERY - Respondent is unable to pay the costs associated with the investigation and prosecution of this action and shall not be ordered to pay costs pursuant to Business and Professions Code Section 125.3.

(12) VIOLATION OF PROBATION - If a respondent violates the conditions of his/her probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

(13) LICENSE SURRENDER - During respondent's term of probation, if he or she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender his or her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- (1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- (2) One year for a license surrendered for a mental or physical illness.

(14) PHYSICAL EXAMINATION - Within 45 days of the effective date of this decision, respondent, at his/her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed,

submit an assessment of the respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified respondent that a medical determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

**(15) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE** - Respondent, at his/her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent in violation of probation.

Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

**(16) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS -**

Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

**(17) SUBMIT TO TESTS AND SAMPLES** - Respondent, at his/her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he/she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, the respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account

documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

(18) MENTAL HEALTH EXAMINATION - The respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his/her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified respondent that a mental health determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

(19) THERAPY OR COUNSELING PROGRAM - Respondent, at his/her expense, shall participate in an on-going counseling program until such time as the Board releases him/her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

DATED: 1/30/08

A handwritten signature in black ink, appearing to read 'GARY BROZIO', written over a horizontal line.

GARY BROZIO  
Administrative Law Judge  
Office of Administrative Hearings

1 BILL LOCKYER, Attorney General  
of the State of California  
2 LINDA SCHNEIDER  
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8

9 Attorneys for Complainant

10 **BEFORE THE**  
11 **BOARD OF REGISTERED NURSING**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

14 NANCY JEAN ANDUJAR  
853 Amigos Way  
15 Newport Beach, CA 92660

16 Registered Nurse License No. 636313

17 Respondent.

Case No. 2007-301

OAH No. L2007090349

**FIRST AMENDED ACCUSATION**

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this First Amended  
22 Accusation solely in her official capacity as the Executive Officer of the Board of Registered  
23 Nursing, Department of Consumer Affairs.

24 2. On or about April 20, 2004, the Board of Registered Nursing issued  
25 Registered Nurse License Number 636313 to Nancy Jean Andujar ("Respondent"). The  
26 Registered Nurse License Number was in full force and effect at all times relevant to the charges  
27 brought herein and will expire on November 30, 2009, unless renewed.

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## JURISDICTION

3. This First Amended Accusation is brought before the Board of Registered Nursing, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

". . . .

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

". . . ."

6. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

". . . .

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

///

1           “(c) Be convicted of a criminal offense involving the prescription, consumption,  
2 or self-administration of any of the substances described in subdivisions (a) and (b) of this  
3 section, or the possession of, or falsification of a record pertaining to, the substances described in  
4 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence  
5 thereof.

6           “....”

7           7.       Section 482 of the Code states:

8           “Each board under the provisions of this code shall develop criteria to evaluate the  
9 rehabilitation of a person when:

10          “....”

11          “(b) Considering suspension or revocation of a license under Section 490.

12          “Each board shall take into account all competent evidence of rehabilitation  
13 furnished by the applicant or licensee.”

14          8.       Section 490 of the Code states:

15          “A board may suspend or revoke a license on the ground that the licensee has  
16 been convicted of a crime, if the crime is substantially related to the qualifications, functions, or  
17 duties of the business or profession for which the license was issued. A conviction within the  
18 meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo  
19 contendere. Any action which a board is permitted to take following the establishment of a  
20 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has  
21 been affirmed on appeal, or when an order granting probation is made suspending the imposition  
22 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the  
23 Penal Code.”

24          9.       Section 493 of the Code states:

25          “Notwithstanding any other provision of law, in a proceeding conducted by a  
26 board within the department pursuant to law to deny an application for a license or to suspend or  
27 revoke a license or otherwise take disciplinary action against a person who holds a license, upon  
28 the ground that the applicant or the licensee has been convicted of a crime substantially related to

1 the qualifications, functions, and duties of the licensee in question, the record of conviction of the  
2 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
3 and the board may inquire into the circumstances surrounding the commission of the crime in  
4 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
5 qualifications, functions, and duties of the licensee in question.

6 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and  
7 'registration.'"

8 10. California Code of Regulations, title 16, section 1444, states:

9 "A conviction or act shall be considered to be substantially related to the  
10 qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the  
11 present or potential unfitness of a registered nurse to practice in a manner consistent with the  
12 public health, safety, or welfare. Such convictions or acts shall include but not be limited to the  
13 following:

14 "....

15 "(c) Theft, dishonesty, fraud, or deceit."

16 "...."

17 11. California Code of Regulations, title 16, section 1445, states:

18 "....

19 "(b) When considering the suspension or revocation of a license on the grounds  
20 that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of  
21 such person and his/her eligibility for a license will consider the following criteria:

22 "(1) Nature and severity of the act(s) or offense(s).

23 "(2) Total criminal record.

24 "(3) The time that has elapsed since commission of the act(s) or offense(s).

25 "(4) Whether the licensee has complied with any terms of parole, probation,  
26 restitution or any other sanctions lawfully imposed against the licensee.

27 "(5) If applicable, evidence of expungement proceedings pursuant to  
28 Section 1203.4 of the Penal Code.

1                   “(6) Evidence, if any, of rehabilitation submitted by the licensee.”

2                   12.     Section 125.3 of the Code provides, in pertinent part, that the Board may  
3 request the administrative law judge to direct a licensee found to have committed a violation or  
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
5 and enforcement of the case.

6                   **FIRST CAUSE FOR DISCIPLINE**

7                   (August 16, 2005 Conviction of a Crime–  
8                   Driving While Having Measurable Blood Alcohol Level)

9                   13.     Respondent is subject to disciplinary action under Code sections 490 and  
10 2761, subdivision (f), for a criminal conviction that is substantially related to her qualifications,  
11 functions, and duties as a registered nurse, in that on or about August 16, 2005, in a criminal  
12 proceeding entitled *People v. Nancy Jean Andujar* in San Diego County Superior Court, Case  
13 Number CN196555, Respondent was convicted by her plea of guilty to a violation of Vehicle  
14 Code section 23152, subdivision (b) [driving while having a blood alcohol level of .08% or  
15 more], a misdemeanor. The circumstances are as follows:

16                   a.     On or about June 2, 2005, at approximately 3:37 p.m., a driver in  
17 Rancho Santa Fe, San Diego, observed Respondent traveling behind her in a Jeep, weaving in  
18 and out of the traffic lane. The driver observed Respondent driving all over the road, onto the  
19 side of the road, and trying to pass her on the inside (right side). At one point, the driver was  
20 almost hit by Respondent's vehicle. At a stop sign near Encinitas Blvd., the driver exited her  
21 vehicle, contacted Respondent, and asked her what she was doing. The driver saw that  
22 Respondent had glassy eyes and looked drunk. The driver also noticed that there were two other  
23 people in the Jeep, who were Respondent's two children, ages 12 and 14 at the time.

24                   The driver got back into her car and let Respondent pass her, at which  
25 point the driver began to follow Respondent. The driver followed Respondent westbound on  
26 Encinitas Blvd., and observed Respondent drive up onto a curb. The driver called the San Diego  
27 Sheriff's Department to report Respondent's driving. The driver continued to follow Respondent  
28 to her residence, where Respondent pulled into her driveway and parked the Jeep.

1 A deputy from the San Diego Sheriff's Department arrived at  
2 Respondent's residence and contacted the driver about what had happened. The deputy also  
3 spoke to Respondent's two children, who told him that Respondent had been driving the Jeep  
4 and that she was drunk. Respondent was subsequently detained. When another Sheriff's deputy  
5 arrived at the scene, Respondent told this deputy that she was taking Xanax for anxiety, 1 mg per  
6 day. Respondent was later arrested for driving under the influence of alcohol and drugs.

7 b. In a misdemeanor criminal complaint entitled *People v. Nancy*  
8 *Jean Andujar*, San Diego County Superior Court Case No. CN196555, Respondent was charged  
9 in Count 1 with driving under the influence of alcohol/drugs (Vehicle Code § 23152, subd. (a))  
10 and in Count 2 with driving while having a blood alcohol level of .08% or more (Vehicle Code §  
11 23152, subd. (b)). In addition, a punishment enhancement was alleged for both Counts that a  
12 minor under 14 years of age was a passenger in the vehicle at the time of the offense (Vehicle  
13 Code § 23572, subd. (a)).

14 c. On or about August 16, 2005, Respondent pled guilty to Count 2 of  
15 the criminal complaint, with Count 1 and the punishment enhancements dismissed as a result of  
16 the plea. On or about the same date, Respondent was sentenced to serve 180 days in the custody  
17 of the Sheriff, but execution of sentence was suspended and Respondent placed on summary  
18 probation for three (3) years. Respondent was ordered to pay a fine of \$2,000.00, and to attend  
19 and complete the First Conviction Program. Respondent's California driver's license was also  
20 restricted for ninety (90) days.

21 d. On or about July 5, 2006, Respondent's probation was summarily  
22 revoked due to a subsequent criminal case in *People v. Nancy Jean Andujar*, Case No.  
23 CN213536, regarding Respondent's September 5, 2006 misdemeanor conviction for driving  
24 when privilege suspended (Vehicle Code section 14601.1, sub. (a)). On or about September 5,  
25 2006, Respondent's probation was reinstated and continued on the same terms and conditions.

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1 b. On or about December 13, 2006, Respondent's case was called for  
2 a restitution review. Respondent failed to appear and probation was summarily revoked.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 (Unprofessional Conduct- Hit and Run Conviction)

5 17. Respondent is subject to disciplinary action under Code section 2761,  
6 subdivision (a), on the grounds of unprofessional conduct, in that she was convicted of a criminal  
7 offense involving a hit and run accident as set forth in paragraph 16 above.

8 **PRAYER**

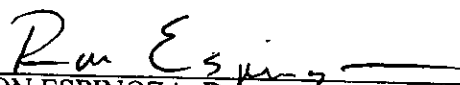
9 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
10 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

11 1. Revoking or suspending Registered Nurse License Number 636313, issued  
12 to Nancy Jean Andujar;

13 2. Ordering Nancy Jean Andujar to pay the Board of Registered Nursing the  
14 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
15 Professions Code section 125.3; and

16 3. Taking such other and further action as deemed necessary and proper.

17  
18 DATED: 12-13-07

19  
20   
21 RON ESPINOZA, Deputy Attorney General  
22 Attorney for Complainant  
23 RUTH ANN TERRY, M.P.H., R.N.  
24 Executive Officer  
25 Board of Registered Nursing  
26 Department of Consumer Affairs  
27 State of California  
28